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NTSB Order No. EA-3853

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of April, 1993

JOSEPH DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11428
v.)	
)	
HOMER A. LAMBERT,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on March 5, 1991, following an evidentiary hearing.¹ The law judge affirmed an order (complaint) of the Administrator finding that respondent had violated 14 C.F.R. 121.563.² The law judge dismissed the

¹The initial decision, an excerpt from the hearing transcript, is attached.

²§ 121.563, Reporting mechanical irregularities, reads:

remaining charges, and amended the sanction, reducing the suspension of respondent's airman certificates from 60 to 15 days.³ We grant the appeal and dismiss the complaint.

On July 9, 1989, respondent was pilot in command of Continental Airlines, Inc., Boeing 737 Flight 617 from LaGuardia Airport, NY to Cleveland, OH. As a part of his preflight check of the aircraft, he was to check that the E&E (electronics and equipment) door was secured. Shortly after takeoff, a cockpit warning light came on, indicating that the E&E door was not closed. Respondent immediately returned the aircraft to LaGuardia. He taxied to the head of an alleyway in the ramp area near the gate, where he had a mechanic check the door. The mechanic testified that the door appeared to be properly closed, but that a switch might have malfunctioned. Tr. at 14-16. The warning light did not come on again. The aircraft resumed its schedule, using the same clearance. On arrival at Cleveland, respondent entered the equipment irregularity into the aircraft's log.

(..continued)

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time. Before each flight the pilot in command shall ascertain the status of each irregularity entered in the log at the end of the preceding flight.

³The law judge dismissed charges that respondent violated §§ 91.29(a), 121.315(c), and 91.9, and the Administrator has not appealed that dismissal or the reduction in sanction.

Although the law judge dismissed the charge alleging an inadequate preflighting, he affirmed the § 121.563 violation. He found that, in light of the definition of "flight time,"⁴ logging in Cleveland, rather than LaGuardia, violated the rule.⁵

We conclude that the rule is vague and ambiguous, providing insufficient notice to airmen of its application to the facts here. Indeed, our review of cases cited by the Administrator confirms difficulties of interpretation.

Prior to 1980, § 121.563, Reporting mechanical irregularities, read:

The PIC shall enter or have entered in the maintenance log of the airplane each mechanical irregularity that comes to his attention during flight time.

In Leighton, we concluded that the rule failed to say when to log. There, a mechanical irregularity occurred on a flight from Las Vegas to Omaha, but was not logged until after three more legs of the trip. We concluded that it was "perhaps" more logical to construe flight to mean one takeoff and one landing. Id at 414-415. But, even under this version of the rule, we found that the purpose of the rule (to advise maintenance and the next crew of mechanical difficulties) had been fulfilled and we dismissed the Administrator's order.

⁴Title 14 C.F.R. 1.1 defines flight time as "the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing. ('Block-to-block' time.)"

⁵The law judge stated that the current rule specifies the time of entry, thus remedying a problem the Board found in Administrator v. Leighton, 3 NTSB 413 (1977).

In 1980, the rule was changed to read:

The pilot in command shall ensure that all mechanical irregularities occurring during flight are entered in the maintenance log of the airplane at the next place of landing.

Emphasis added. It was changed again in 1982 to read:

The pilot in command shall ensure that all mechanical irregularities occurring during flight time are entered in the maintenance log of the airplane at the end of that flight time.

Emphasis added.

As indicated earlier, Title 14 C.F.R. 1.1 defines flight time as "the time from the moment the aircraft first moves under its own power for the purpose of flight until the moment it comes to rest at the next point of landing. ('Block-to-block' time.)"

The term "block to block" is not defined in the rules, and the testimony in the record on this significant aspect of the rules is confusing at best.

The Administrator's witness testified that flight time ends when the aircraft "comes back into the blocks." Tr. at 74. He stated that this meant "when he blocked out and then arrived back in the chocks." Tr. at 80. Following some confused discussion, the witness offered contradictory and circular testimony (id. at 83-84), as follows:

- Q. So "block to block" means the wood chocks are removed?
A. Uh-huh.
Q. The aircraft is away from the gate, whether pushed or towed, or in some fashion; correct?
A. Uh-huh.
Q. Now he's blocked out?
A. Yeah.

- Q. Now, he's blocked back in, then the aircraft comes to a gate, stops, the chocks are put in place. Those are the blocks aren't they, sir?
- A. Well, not, we use that term "block to block," it need not necessarily mean a chock, a physical chock. It's the time at which the flight stopped, and an action needed to be taken and recorded. And that's what I meant or referred to in this situation. "Block to block" for that segment of flight.

Respondent urges that the landing at LaGuardia did not end that segment of flight time. He notes that the aircraft was not depressurized, did not return to the gate, did not open its doors, and that it took off using the same clearance. It also appears that the aircraft continued to have the same flight number and the same dispatch release, and that it taxied back to an alleyway, not a jetway, and did so under its own power (rather than being towed).

As explained by the Administrator (Reply at 9-10), the term flight time was added to reflect the intent to cover the ground, as well as air, time; in effect, to cover the entire period until an aircraft came to final rest. This aircraft did not do so at LaGuardia.

Moreover, as indicated above, it is not at all clear how the Administrator is defining "block-to-block." To be consistent with the definition of flight time, block-to-block would mean departure from the gate and arrival at the gate at the completion of the flight. In these circumstances, we do not think it was unreasonable for respondent to have believed his flight time was continuing.⁶

⁶The mechanic also testified (Tr. at 17) that a logbook

The cases cited to us by the Administrator only serve to underscore the confusion inherent in the rule as currently drafted. Heisner and Diaz, NTSB Order EA-2846 (1988), involved a flight from Ypsilanti, MI to Dallas, TX and the return. Prior to taxiing for takeoff from Ypsilanti, the crew knew of an inoperative light. We stated that the irregularity should have been logged at Ypsilanti, but on review it is clear that flight time under the rule could not have ended at that point. Heisner and Diaz also addressed a second situation -- a flight from Grand Rapids, MI to Toledo, OH, Wilmington, DE, and Philadelphia, PA. The aircraft hit its tail on the runway on takeoff from Grand Rapids. Respondents returned to a taxiway, examined the tail themselves, and took off. The irregularity was not logged until Philadelphia. We said that it should have been logged "at the very latest" at Toledo. Not only did we beg the question, but this language indicates our understanding that logging at Toledo would have sufficed when it would not under the Administrator's theory here.

Similarly, in Moore, 5 NTSB 794 (1985), respondent conducted a 10-minute local flight at Puerto Plata, Dominican Republic, before loading passengers for a flight to JFK Airport. The flight was used to "air" start an engine. Respondent logged the

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entry at LaGuardia would have been necessary only if the plane had come into the gate, thus supporting respondent's interpretation of flight time. We note further that a convincing argument can be made both that the aircraft did not truly come to rest in the broad sense, given the continuing intent to proceed to Cleveland, and that the "next" point of landing need not be interpreted to encompass this event.

event during the subsequent passenger-carrying flight. We found that the logging should have occurred before takeoff for JFK, although, under the Administrator's interpretation here, the logging might have been required before the local flight because the condition of the engine was known even before the flight -- the purpose of the flight was to circumvent repair.

Not only do we find the rule ambiguous and that the Administrator has not demonstrated by a preponderance of the evidence its violation by respondent, we are compelled to note our concern, from a safety perspective, with applying it as the Administrator would do here. We agree with respondent's argument, citing Leighton, that punishing respondent in this situation is illogical, and does not promote safety. Instead, respondent cautiously returned to LaGuardia and had the item checked and confirmed to be in working order. The Administrator would punish him for that act because he failed to log at his first landing site. Instead, the Administrator should be encouraging behavior that is, clearly, the safer course.

Moreover, the Administrator's claims that reading the rule to require logging at LaGuardia is reasonable because it promotes a legitimate safety purpose are weak, at best. The Administrator's first argument in this regard is that maintenance and subsequent flight crews must be advised of equipment discrepancies. We could not agree more, and respondent's actions did so. Not only was maintenance advised, respondent's conscientious action led to the problem being corrected. The

next flight crew was advised by the log entry at Cleveland. The Administrator falls back on the argument that, had an accident or incident occurred on the LaGuardia - Cleveland flight, it would be "difficult" (Tr. at 78) to complete an investigation without this information in the aircraft's log. Yet, the record shows that the mechanic's report would have been entered in the airline's computerized maintenance records, and that the FAA would know to check those records. Tr. at 16, 37. More important, this argument fails to recognize that, if respondent had not returned to LaGuardia to have the problem attended to, and had an accident enroute, logging would not have been required until Cleveland and no one might ever have known of the equipment difficulty. Again, application of the Administrator's reading of this rule against respondent could encourage anomalous and less safe results. Respondent's failure to log at LaGuardia had no adverse safety effect and his logging at Cleveland, combined with his actions at LaGuardia to have the irregularity corrected, complied with the purpose of § 121.563 as we see it.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted; and
2. The Administrator's order is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.